Office-Supreme Court, U.S.
FILED
OCT 2 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 512

CLARENCE N. BEACH, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the District of Columbia Circuit

FORD E. YOUNG, JR.
Attorney for Petitioner
5540 Connecticut Ave., N.W.
Washington, D.C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C.

TABLE OF CONTENTS

	Page
Opinion Below	2
Jurisdiction	2
Statement of the Matter Involved	2
Questions Presented	9
Reasons for the Allowance of the Writ	12
I. As to Contention of Petitioner That the Statute Upon Which the "Rule to Show Cause" Is the United States District Court for the District of Columbia Was Based Violates and Is Incompatible With That Part of the Fifth Amendment Regarding Deprivation of Property Without Due Process of Law	13
II. As to Whether Statute Applies Only to Relative Who "Lives Within the District of Columbia"	19
III. As to Whether Laches Should Have Applied	23
IV. As to Immunity of Veteran's Pension Moneys	26
V. As to Equitable Defenses	29
Summation of Reasons for Allowance of the Writ	31
Appendix A—Opinion below	1a
Appendix B—Judgment below	9a

INDEX OF CITATIONS

CASES:

Blodgett v. Holden, 275 U.S. 142	14, 19
Commonwealth v. Zommick, 362 Pa. 299, 66 A. 2d 237 (1949)	17
Corpus v. Department of Mental Hygiene, State of California, 301 S.W. 2d 217 (Texas 1957)	22
Curtis v. Curtis, 46 N.W. 2d 460, 461, 330 Mich. 63	20

Page

Dandurand v. Kankakee County, 196 Ill. 537, 63 N.E. 1011 (1902) 30
Daugherty v. Nelson, 234 S.W. 2d 353, 358, 241 Mo. App. 121 20
Hart v. Commissioners, 81 U.S. App. 154, 155 F. 2d 877 (1946) 25
In re Idleman's Commitment, 146 Ore. 13, 27 P. 2d 305 (1933) 17, 30
Lawrence v. Shaw, 300 U.S. 245 27
Liberty Paper Board Co., Inc. v. United States, U.S. D.C. S.D. Ohio E.D., 37 Fed. Supp. 751 14
Louisville and Nashville Railroad Co. v. Finn and Others as Railroad Commissioners of Kentucky, 235 U.S. 601 15
Nelson v. Nelson, 24 N.W. 2d 327, 331, 71 S.D. 342 .. 20
People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896) 17
Porter v. Aetna Casualty and Surety Co., 370 U.S. 159 27
State v. Bateman, 110 Kan. 546, 204 P. 682 (1922) ... 17
State v. Webber, 163 Ohio St. 598, 128 N.W. 2d 3 (1955) 18

STATUTES:

Code of Laws for the District of Columbia, 1951 Edition, Title 21, Section 318:

Quoted 3–4
Referred to 9, 10, 12, 15, 18, 21, 31, 32

United States Code, Title 28, Section 1254(1) 2

TEXT REFERENCES:

Municipal Corporations by McQuillan, Third Edition, Volume 17 24
"Principles of the Constitution of the United States", by Professor Westle W. Willoughby, Second Edition 14
Words and Phrases, Volume 25 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No.

CLARENCE N. BEACH, *Petitioner.*

v.

DISTRICT OF COLUMBIA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the District of Columbia Circuit

---

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

CLARENCE N. BEACH, petitioner, prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit entered in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit decided July 5, 1963 appears as the appendix hereto. Petitioner, then appellant, did not request a rehearing in said Court. Said case has not been included in the official record whereby decisions of said Court are reported. The Findings of Fact, Conclusions of Law and Order of the Trial Judge of the United States District Court for the District of Columbia who heard this case as set forth on page 45 through 48 of the Joint Appendix, nine copies of which have been filed in this Honorable Court.

JURISDICTION

The jurisdiction of this Honorable Court to hear and determine this case is based upon Title 28, Section 1254 (1) of the U. S. Code.

STATEMENT OF THE MATTER INVOLVED

Petitioner is the father of Ellen J. Schuerger who was committed to the St. Elizabeths Hospital on September 9, 1951, having been adjudicated to be of unsound mind. Said daughter has been a patient ever since. Said daughter was one of petitioner's four (4) children by his first marriage. The said Ellen J. Schuerger had been twice married, and had been emancipated from the care and control of now appellant for sixteen (16) years prior to being committed to said hospital. The then brothers of the said Ellen J. Schuerger (Clarence N. Beach, Jr., a brother of said patient and a son of now Appellant, having since died) appeared at the Hearings regarding the committing of said patient to said Hospital. Now Appellant did not participate in these proceedings.

From the time that said patient was committed to said Hospital, as aforesaid, payments totaling One Thousand Five Hundred and Thirty-six Dollars and Eight Cents

($1,536.08) were made to The Government of the District of Columbia out of funds in the patient's estate.

During March of 1961 the Government of the District of Columbia instituted action in the United States District Court for the District of Columbia by the filing of a Citation for Rule to Show Cause, thereby endeavoring to place upon petitioner the financial responsibility of maintaining said daughter at said Hospital during the period which had elapsed and thereafter. This action was taken by reliance of counsel for the District of Columbia upon Section 318 of Title 24 of the District of Columbia Code, 1951 Edition, as amended, which is as follows:

21-318 (16:36). Liability of relatives for costs of maintenance and treatment

The father, mother, husband, wife, and adult children of an insane person, if of sufficient ability, and the committee or guardian of his or her person and estate, if his or her estate is sufficient for the purpose, shall pay the cost to the District of Columbia of his or her maintenance, including treatment in Saint Elizabeths Hospital or in any other Hospital to which the insane person may be committed. It shall be the further duty of said commission, to examine under oath, the father, mother, husband, wife, adult children, and committee, if any, of any alleged insane person wherever such relatives live within the District of Columbia, and to ascertain the ability of such relatives or committee, if any, to maintain or contribute toward the maintenance of such alleged insane person: Provided, That in no case shall said relatives or committee to be required to pay more than the actual cost to the District of Columbia of maintenance of such alleged insane person.

If any person hereinabove made liable for the maintenance of an insane person shall fail so to provide

or pay for such maintenance, the court shall issue to such person a citation to show cause why he should not be adjudged to pay a portion of or all of the expenses of maintenance of such patient. The citation shall be served at lease ten days before the hearing thereon. If, upon such hearing, it shall appear to the court that the insane person has not sufficient estate of which his maintenance may properly be fully met and that he has relatives of the degrees hereinabove mentioned who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by such relatives of such sum or sums as it may find they are reasonably able to pay and as may be necessary to provide for the maintenance of such insane person. Said order shall require the payment of such sums of the Board of Public Welfare annually. It shall be the duty of the board to collect the said sums due under this section, and to turn the same into the treasury of the United States to the credit enforced against any property of the insane person or of the person liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case. (Aug. 9, 1939, 53 Stat. 1298, ch. 620 § 9.)

There were hearings before the Trial Judge in the United States District Court for the District of Columbia, as set forth on pages 11 through 39 of the Joint Appendix, nine copies of which have been filed in this Honorable Court.

There are no known facts with regard to the first divorce of the patient Ellen J. Schuerger. After the brothers of the patient (and it is significant that it was the brothers of the patient and *not* the appellant who caused the patient to be committed) had caused Ellen J. Schuerger to go to the St. Elizabeth's Hospital, Fred Schuerger, her then second husband, vacationed in Florida and went into one

of the so-called "easy divorce States" to obtain a divorce. The said Fred C. Schuerger has remarried and resides at 6303 Kenilworth Ave., Riverdale, Maryland. There is nothing in the record to indicate any effort whatsoever by the Government of the District of Columbia to hold the said Fred C. Schuerger liable for support moneys for the care and maintenance of Ellen J. Schuerger. The record shows that appellant had established a residence at McKay's Beach, Valley Lee Post Office, St. Mary's County, Maryland, in time to vote in the 1928 election; that appellant retired from the Internal Revenue Service during 1944 and that during the period from 1951 until said Rule to Show Cause was instituted and even since then, petitioner and his present wife, whom he married during 1942, have lived at their home at McKay's Beach approximately ten (10) months each year. Petitioner is a veteran of the Spanish-American War. Due to his advanced age and many ailments and infirmities, petitioner must come to Washington from time to time to receive medical attention at the Mount Alto Hospital. Therefore petitioner maintains a house in this city where petitioner and his wife live while petitioner is an "out-patient" of said hospital and where petitioner's wife lives when petitioner is in said hospital.

Petitioner registers his automobile in Maryland. He votes in Maryland. He has engaged in political activity in Saint Mary's County. He is considered by the local populace of McKay's Beach, including the storekeepers and Parish Priest, to be a resident. Were it not for hospitalization for petitioner and his wife, who had an operation on her larynx a few years back, petitioner and his wife would continuously live at McKay's Beach and would not maintain a house within the District of Columbia. The address of such house here is 7130 9th Street, N.W. Petitioner also owns the property 7131 9th Street, N.W., which he rents.

The record in the Court below shows that petitioner had been receiving pension as a Veteran of the Spanish-

American War for from thirty (30) to thirty-five (35) years, that this pension started at Thirty-three Dollars ($33.00) per month, but increased to the sum of One Hundred One Dollars and Fifty Nine Cents. ($101.59) per month (J.A. 15). As of 1942 said pension payments were approximately Seventy-five Dollars ($75.00) per month. In his testimony Petitioner stated that he has not especially earmarked his pension; that pension moneys have been used to "run the house"; and that, if he hadn't so used such moneys, it would have been necessary for him to have utilized funds which are now represented by investments for such operational expenses (J.A. 15).

In the course of hearings in the United States District Court for the District of Columbia the Trial Judge made inquiring of counsel for now respondent as to why the Government of the District of Columbia had waited for approximately nine (9) years after the estate of Ellen J. Schuerger had become depleted before instituting action against now petitioner. Trial counsel for now appellant endeavored to explain the delay on the ground that there are over five-thousand (5,000) District residents at St. Elizabeths Hospital, that the District of Columbia Government has limited facilities with which to keep a trace on all of the relatives who might be responsible for their care and, furthermore, that there is, perhaps, a continuing influx and egress from the hospital from day to day which increases the burden upon the administrative agencies of the District of Columbia (J.A. 4; 11-13).

Petitioner's wife testified that they do not spend money frivolously; and that it takes all of their income for normal living expenses (J.A. 26-27).

The patient, Ellen J. Schuerger, does not have any children.

The now deceased son of Petitioner, Clarence N. Beach, Jr., had two sons by his first marriage. The oldest of

these two grandsons of appellant had four (4) children at the time of the hearing of the Rule to Show Cause. The said Clarence N. Beach, Jr., had three (3) children by his second marriage. Petitioner's testimony showed that all of the lineral descendants through Clarence N. Beach, Jr. are and will be in need of financial assistance (J.A. 31-33). The other daughter of now appellant is Mrs. Mary Flaherty and she has three (3) children. Petitioner testified that these children are seeking higher education and, thus, in need of financial assistance (J.A. 33-34).

With regard to Paul Beach, a son of now petitioner, the record shows that his children are adopted and that the said Paul Beach has a position in Salisbury, Maryland, which enables the said Paul Beach to provide comfortably for said adopted children (J.A. 34-35).

The constitutional point with regard to the Statute in question violating the due process clause of the Fifth Amendment to the Constitution of the United States was thoroughly argued in the United States District Court and again in the Court of Appeals for the District of Columbia Circuit. In neither Court did the contention of counsel for new petitioner prevail.

The trial Judge found that now petitioner lives part of the time in Maryland and part of the time within the District of Columbia. There was no determination as to now petitioner's residence. The Court of Appeals held, as a matter of law, that residence would make no difference and that the Statute would be applicable regardless of now petitioner's residence.

The point with regard to laches did not affect the decision of the Trial Judge. Although the opinion of the Court of Appeals was to the effect that laches would not apply, said decision placed the commencement of the recovery of the Government of the District of Columbia at such time as steps had been taken whereby to make demand

upon now petitioner for payment. Said decision remands the case to the Trial Judge for a determination as to when such steps were first taken. The decision of the Trial Judge to the effect that now petitioner should pay $8,700.00 up to the date of such decision and the sum of $75.00 per month thereafter awarded to the Government of the District of Columbia, approximately one-third of the cost of the maintenance of the said Ellen J. Schuerger and placed such burden upon her elderly father, petitioner in this Honorable Court.

The point with regard to exemption of Veterans Pension Monies was deemed by the United States Court of Appeals for the District of Columbia Circuit to have been inapplicable in view of the fact that said decision held the amount charged of now petitioner to have been equitable and not violative of the discretion reposed in the Trial Judge. In this connection, it is impossible that without the Veterans Pension Monies over a period of now from thirty-two to thirty-seven years, as aforesaid, your petitioner could not possibly now own the $12,000.00 building and loan association which, together with his real estate holdings in the District of Columbia, have constituted the prime target of counsel for the Government of the District of Columbia. Counsel for now petitioner must take the blame for the fact that the Court of Appeals appeared not to understand that petitioner does not own the stock. Counsel endeavored in his Brief and in oral argument to make it clear that petitioner's wife had purchased said stocks mainly with monies which she had earned prior to her marriage to petitioner and that although petitioner's wife is middle-aged and petitioner is quite elderly, it was and is the wish and decision of petitioner's wife that stocks be in the joint names of petitioner and his wife so that petitioner would own same, without probate, in the event that petitioner's wife should predecease petitioner.

Thus, the actual assets of petitioner out of which he must pay the final determination of any Judgment against him

are the parcel of real estate improved by dwelling house thereon being lot 41, square 2965 known as 7130 9th Street, N.W., this city, assessed at $9,141.00; lot 29 in square 2966, known as 7131 9th Street, this city and assessed at $10,376.00; a one-half interest in the parcel of real estate at McKay's Beach valued at between $8,000.00 and $10,000.00; and a Building and Loan Savings account which, at the time of the Hearing in the Trial Court was approximately $12,000.00. The parcels of real estate within the District of Columbia have been on a declining market for the past several years.

QUESTIONS PRESENTED

1. The question is whether or not the United States Court of Appeals for the District of Columbia Circuit made an erroneous constitutional decision in holding that the Statute which was relied upon by now respondent in bringing the "Rule to Show Cause" against now petitioner in the United States District Court for the District of Columbia namely Title 21, Section 318 of the Code of Laws for the District of Columbia to be constitutional and not violative of that part of the Fifth Amendment to the Constitution of the United States which prohibits the taking of private property without Due Process of Law in that said Statute allows a procedure which could be utterly arbitrary and unreasonable and in that said Statute does not provide for a trial by jury.

2. The question is whether or not the United States Court of Appeals for the District of Columbia Circuit made an erroneous constitutional decision in holding that the Statute which was relied upon by now respondent in bringing the "Rule to Show Cause" against now petitioner in the United States District Court for the District of Columbia namely Title 21, Section 318 of the Code of Laws for the District of Columbia to be constitutional and not violative of that part of the Fifth Amendment of the Constitution of the United States which prohibits the taking of

private property without the due process of law in that the United States Court of Appeals for the District of Columbia Circuit supported the decision of that Honorable Court by citation of cases involving the Fourteenth Amendment to the Constitution of the United States and did not give any basis whatsoever with regard to the Due Process of Law clause of the Fifth Amendment.

3. The question is whether or not the United States Court of Appeals for the District of Columbia Circuit made an entirely erroneous interpretation of the Statute which was relied upon by now respondent in bringing the "Rule to Show Cause" against now petitioner, namely Title 21, Section 318 of the Code of Laws for the District of Columbia in that the decision of that Honorable Court was to the effect that said Statute would place the burden of making payments for the maintenance of an adult daughter, long emancipated from the home of the father, twice married before entering said hospital, and caused to enter said hospital by her brothers, regardless of whether or not such father was a resident of the District of Columbia, or, on the other hand, of any State of the Union.

4. The question is whether or not the United States Court of Appeals for the District of Columbia Circuit made such a serious mistake in interpreting the Statute in question as to invoke the jurisdiction of this Honorable Court in that the opinion of the United States Court of Appeals was to the effect that laches would not apply, but that the requirement of payment from the petitioner, as father of a patient in the St. Elizabeths Hospital, should be made retroactive only from the time when the authorities from the District of Columbia took such steps as amounted to a demand upon the petitioner, as father of such patient, for contribution, thereby changing the maxim of equity regarding laches insofar as the Statute in question, namely Section 318 of Title 21 of the Code of Laws for the District of Columbia is concerned.

5. The question is whether or not the United States Court of Appeals for the District of Columbia Circuit made a serious error in that, in determining the amount of petitioner's assets, said Honorable Court did not take into consideration the fact that had petitioner not received pension as a Veteran of the Spanish-American War for the past 30 to 35 years, petitioner's estate would necessarily now be only about two-fifths of the amount reported in the evidence adduced at the hearing in the Trial Court, the United States District Court for the District of Columbia.

6. The question is whether or not the Court of Appeals for the District of Columbia Circuit committed such a serious error as to invoke the jurisdiction of this Honorable Court by including in the assets of now petitioner certain stocks owned by petitioner's wife when it was made clear in the briefs filed in the Honorable Court of Appeals, in the argument of counsel and in the Transcript of the Testimony adduced at the hearings in the Trial Court (which said testimony was set forth in the joint appendix to which reference was made) that said stocks were purchased mainly with moneys earned by petitioner's wife prior to her marriage to petitioner and that petitioner's wife had caused said stocks to be put in the name of herself and petitioner only to avoid same being included in probate proceedings in the event that petitioner's wife should predecease petitioner.

7. The question is whether or not the Court of Appeals for the District of Columbia Circuit committed severe error in finding that the sum of Seventy-five Dollars ($75.00) as awarded by the Trial Judge to respondent from petitioner was such a fair award and so amply supported by the evidence as to not constitute an abuse of the discretion which the Statute in question purports to repose in the Trial Judge as Chancellor.

REASONS FOR THE ALLOWANCE OF THE WRIT

The opinion of the United States Court of Appeals for the District of Columbia Circuit indicates that, while denying the points made by counsel for now petitioner to the effect that the statute here involved namely, Section 318 of Title 21 of the Code of Laws for the District of Columbia violates and is incompatible with that part of the Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of property without "Due Process of Law," to the effect that now petitioner does not come within the terms of the Statute in that petitioner does not "Live Within the District of Columbia", to the effect that now Respondent, the Government of the District of Columbia was guilty of "laches" when the Citation for Rule to Show Cause was filed against now petitioner; to the effect that now petitioner's estate or a major portion thereof is immune from the claim of the Government of the District of Columbia by reason of said estate having been accrued from pension moneys as a Veteran of the Spanish-American War; and to the effect that, as a matter of equitable discretion, the Trial Judge made an award to now respondent, which exceeded the amount which now petitioner could reasonably afford to pay, yet, the Court of Appeals for the District of Columbia Circuit exemplified a desire to somewhat relieve the burden and hardship upon now petitioner by having the award to now respondent at the rate of Seventy-five Dollars ($75.00) per month commence as of the date when "the District authorities (respondent) took such steps with respect to the father (petitioner) as amounted to a demand upon him for contribution" (page 9 of the opinion of the United States Court of Appeals for the District of Columbia Circuit).

It is most respectfully submitted that any one of the points enumerated hereinabove should be a proper basis for the allowance of the Writ of Certiorari, but that the

combination of these points, one of which involves a constitutional question, together with the substitution of "initial demand" for "laches" renders this case as one most certainly entitled to consideration by this Honorable Court. The points will be dealt with separately hereinbelow.

I. As to Contention of Petitioner That the Statute Upon Which the "Rule to Show Cause" in the United States District Court for the District of Columbia Was Based Violates and Is Incompatible With That Part of the Fifth Amendment Regarding Deprivation of Property Without Due Process of Law.

The United States Court of Appeals for the District of Columbia Circuit, as did the Trial Judge in the District Court of the United States for the District of Columbia, held that counsel for now petitioner was wrong in s[illegible]adfastly contending that decisions of State Courts, interpreting State Statutes comparable to Section 318 of Title 21 of the Code of Laws for the District of Columbia (holding close relatives liable for maintenance for mentally incompetent persons or for paupers), do not violate the Fourteenth Amendment are neither compelling nor applicable to a proper interpretation of that part of the Fifth Amendment to the Constitution of the United States prohibiting the taking of property without "Due Process of Law".

The reasoning of counsel for now petitioner in both Courts was that under the Common Law a parent was no longer liable for a child when that child became of age or was emancipated or both; that the daughter of now petitioner had been twice married and had been emancipated from the home of now petitioner for sixteen years before the brothers of said daughter of petitioner caused her to be committed to the St. Elizabeths Hospital and for twenty-six years before the Government of the District of Columbia filed the "Citation for Rule to Show Cause" why now petitioner should not be held liable for the maintenance of his daughter, retroactive to the date

when said daughter's funds were nearly exhausted (August 5, 1952); and that there could not be a more glowing example of a statute being arbitrary and unreasonable in classification and violating the "fundamental principle of justice" of the due process clause of the Fifth Amendment. Weight was added to this contention by the fact that petitioner is of advanced age (now 86 years of age), that petitioner and his wife have established a "pattern of life" and that the payment to now respondent would work a great hardship upon petitioner.

The following quotation from the text book "Principles of the Constitutional Law of the United States" by Professor Westle W. Willoughby, Second Edition, as set forth on page 723 was relied upon, by counsel for now petitioner, to show that the Doctrine of "Due Process of Law" is a fundamental principle of justice:

> "767. Development of the Doctrine of Due Process of Law. The doctrine implied by the words "due process of law" has a history in Anglo-American Law, which extends for more than seven hundred years back, indeed, to the signing of the Magna Charta. And yet, notwithstanding this long period during which countless opportunities have presented themselves for its application and judicial definition, the doctrine has not yet received a statement in such a form that it's specific applications can, in all cases, be determined. This failure has been due, not to any lack of judicial effort or acumen, but to the very nature of the doctrine, which, asserting a fundamental principle of justice rather than a specific rule to law, is not susceptible to more than general statement."

The cases of *Blodgett* v. *Holden*; 275 U.S. 142, and *Liberty Paper Board Co., Inc* v. *United States*, U.S. Dist. Ct. S.D. Ohio E.D., 37 Fed. Supp. 751, were relied upon to show that a statute may be so wholly arbitrary and un-

reasonable in classification as to be a violation of the Due Process Clause as intended by the Fifth Amendment.

Counsel for now petitioner had to concede that before a person may test the Constitutionality of a statute he must first show that he has been injured by the discrimination of which he complains. *Louisville and Nashville Railroad Co.* v. *Finn and Others as Railroad Commissioners of Kentucky*, 235 U.S. 601, but answered this by showing and contending that now petitioner would be seriously hurt should he be required to pay the amount awarded to now respondent by the Trial Judge, that it is an essential attribute of property, both real and personal that same should be used for the support and maintenance of those who have earned property while in an earning capacity, after old age, ailments and infirmities have precluded them from continuing to earn the means for livelihood, and that the statute in question should now be declared unconstitutional in behalf of now petitioner who would be so badly hurt by the payment of the award of the Trial Judge to now respondent rather than await a time when a litigant close relative of a patient in the St. Elizabeth's Hospital may be financially ruined should there be an abuse of the judicial discretion vested in the Trial Judge by said Statute.

The Justices of the United States Court of Appeals for the District of Columbia Circuit agreed with the Trial Judge that the fact that decisions of State Courts holding that statutes similar to Section 318 of Title 21 of the Code of Laws for the District of Columbia do not violate the Due Process Clause of the Fourteenth Amendment are presuasive to the effect that said Statute does not violate the Due Process Clause of the Fifth Amendment. In this connection the opinion of the Court of Appeals (page 4) pointed out that "The Legislative authority of Congress with respect to the District of Columbia is comparable to the police power of the state legislature".

Thus, both Courts upheld the contention of counsel for now respondent regarding the relevancy of the decisions of State Courts and ruled against the contention of counsel for now petitioner to the effect that there should be a vast distinction between decisions regarding the Due Process Clauses of the Fifth and Fourteenth Amendments.

The Fifth Amendment is a reservation of rights to all citizens whereby to restrict the power of the Federal Government. After the Constitutional Convention there was the struggle for ratification. The Bill of Rights constituted a compromise between those forces favoring and those forces opposing ratification. Thus, the Due Process Clause of the Fifth Amendment became a reservation of a right to the First Citizens of the Republic and to all citizens thereafter. It is just as much of a right to petitioner today as it was to Patrick Henry when he withdrew from his struggle for a new constitutional convention, and agreed to a Bill of Rights as a compromise.

The Fourteenth Amendment, on the other hand, was an aftermath of the Civil War and was a restriction upon the Sovereignty of each of the States. If students of the subject are to be believed, it was forced upon the people of the South by the bayonets of the troops sent in pursuant to the Reconstruction Act. President Johnson had written a scathing denouncement of the Reconstruction Act in his Veto Message. It was passed by the rabid abolitionists over the Presidential Veto.

Counsel for petitioner has steadfastly contended that Federal Courts should interpret the Due Process Clause of the Fifth Amendment with regard to the statute in question and the fact situation in the case which is the subject of this petition on the basis of whether or not there is a violation of a "fundamental principle of justice" and not on the basis of decisions of State Courts with regard to the Fourteenth Amendment.

Furthermore, of the cases cited by the United States Court of Appeals for the District of Columbia Circuit in support of the finding of the effect that "It is not unreasonable, it is not a denial of due process for the law to attach an enforceable obligation to the moral obligation which exists in the usual family relationship of father and daughter" none are sufficiently like the case which is the subject of this petition as to have been persuasive or compelling, even if the tests of the due process clauses of the Fifth and Fourteenth Amendments were to be held to be exactly the same, regardless of the vast differences between the purposes of the said two amendments as pointed out hereinabove. The facts of petitioner's daughter, having been long emancipated and twice married and that it was petitioner's sons who cause his daughter to be committed to the St. Elizabeth's Hospital are established.

How different then is the case of *People* v. *Hill*, 163 Ill. 186, 46 N.E. 796 (1896), which as a suit to require a brother to contribute to the support of a pauper sister, who was physically unable to provide for her own support. The Court upheld the State Statute and also held that the brother was not entitled to a "Trial by Jury."

In the case of *State* v. *Bateman*, 110 Kan. 546, 204 P. 682 (1922), although the State Statute was held to be not violative of the Fourteenth Amendment, the father was held liable for only a limited award against him because his incompetent son had died at 25 years of age.

The case of *In re Idleman's Commitment*, 146 Ore. 13; 27 P. 2d 305 (1933), involved a state statute, which established a maximum of Twenty Dollars ($20.00) per month which could be assessed against a near relative of a mental patient. The Court held that said statute did not violate the State Constitution.

In the case of *Commonwealth* v. *Zommick*, 362 Pa. 299, 66 A. 2d 237 (1949), the father of the patient son had signed the commitment papers on three of four occas-

sions when said son had been a mental patient. The periods of confinement varied from three to six months. At the time of his last commitment (1942) said son was thirty-eight years of age. After such fourth and final commitment, the patient son worked as a carpenter for awhile, but was unemployed for a prolonged period before the Commonwealth instituted suit against the father, who had a "Trial by Jury". Although the jury found for the father, the Supreme Court of Pennsylvania reversed and ruled that since the amount claimed was certain and the father well able to pay, the Trial Judge should have taken the case from the jury and granted the motion of the Commonwealth for a Directed Verdict.

The case of *State* v. *Webber*, 163 Ohio St. 598, 128 N.W. 2d 3 (1955), cited in the Brief for Appellant in the United States Court of Appeals for the District of Columbia Circuit, also involved a "Trial by Jury". No such right is included in Section 318 of Title 21 of the Code of Laws for the District of Columbia.

The point made on page 4 of the Opinion of the United States Court of Appeals for the District of Columbia Circuit to the effect that predecessor statutes have been enforced within the District of Columbia whereby to impose liability upon the estate of an incompetent for the costs of (his or her) maintenance are not disputed. Nor could a contention be supported to the effect that awarding money to the Government of the District of Columbia from the assets of the patient's estate constitutes a violation of the Due Process Clause of the Fifth Amendment. The cases cited are, therefore, it is respectfully submitted, irrelevant to the question of whether or not Section 318 of Title 21 of the Code of Laws for the District of Columbia, whereby to impose liability upon the father of a mental patient, is violative of the said Due Process Clause.

It is respectfully submitted that the case which is the subject of this petition is the classic example whereby to

point out that said statute is so wholly arbitrary and unreasonable in classification and so contrary to the fundamental principle of justice intended by the Founding Fathers, as pointed out hereinabove, that this Honorable Court should grant the Writ of Certiorari whereby to finally render a decision and interpretation of this important constitutional point.

It is also worthy of note that the statute in question here is most assuredly more arbitrary, capricious and unreasonable and more likely to cause greater harm to its victims than was the Gift Tax Statute involved in the case of *Blodgett v. Holden, supra.*

II. As to Whether Statute Applies Only to Relative Who "Lives Within the District of Columbia".

Although this point was seriously debated in both courts and was dealt with in all Briefs filed, the United States Court of Appeals for the District of Columbia Circuit utilized only one paragraph in dealing with the matter (Opinion page 6). Said paragraph assumes that petitioner is a resident of the State of Maryland.

Counsel for now petitioner had pointed out that petitioner has voted and participated in political campaigns in St. Mary's County, Maryland, for many years, that he registers his automobile in Maryland, and that he is considered by his Parish Priest and by the other residents of McKay's Beach to be a resident of Maryland. The testimony adduced at the hearings before the Trial Judge clearly showed, and it was pointed out to the Justices of the United States Court of Appeals for the District of Columbia Circuit, that now petitioner lives at McKay's Beach, St. Mary's County, Maryland, that he receives treatment at the Mount Alto Hospital for his many ailments, that his wife has undergone an operation in recent years, that there are no Veterans Administration Hospital facilities available to him within reasonable proximity to

St. Mary's County, that there are not adequate Hospital facilities for his wife in the area, and that petitioner and his wife maintain a home in Washington exclusively for the purpose of having a place to live while one or the other are in the hospital and for both of them to stay when petitioner is an "out-patient" of the Mount Alto Hospital.

It was respectfully submitted to the United States Court of Appeals for the District of Columbia Circuit that the Trial Judge should have found now petitioner to have been a resident of the State of Maryland and it was pointed out that as a matter of law the term resident and the term "live within" are synonomous.

The best method of determining the legal meaning of the word "live" as used in the Statute in question is to resort to Words and Phrases. Volume 25 of said work on pages 37 and 38 includes, inter alia, the following definitions:

> "'Live' means to make one's abiding place or home, to dwell or reside." *Daugherty* v. *Nelson*, 234 S.W. 2d 353, 358, 241 Mo. App. 121. "The work 'live' is commonly used as a synonym for 'reside'." *Curtis* v. *Curtis*, 46 N.W. 2d 460, 461, 330 Mich. 63. "The words 'live' and 'reside' are synonymous and relate to the domicile or place where person is deemed in law to reside." *Nelson* v. *Nelson*, 24 N. W. 2d 327, 331, 71 S.D. 342.

According to Webster's Giant Illustrated Dictionary, Copyrighted 1942, the words "live" and "reside" are synomymous.

The Trial Judge did not find now petitioner to be a resident of or to "live within" either jurisdiction. Instead, in his sixth finding of fact, he found as follows:

> "6. The Respondent lives within the District of Columbia for a portion of each year at premises 7130

Ninth Street, N.W., and for the remainder of each year resides at McKay's Beach, Maryland."

The United States Court of Appeals for the District of Columbia Circuit appears to have ignored the failure of the Trial Judge to firmly fix the residence of now petitioner, but, assumes that even if petitioner is a resident of the State of Maryland and "lives within" the State of Maryland the Statute would apply.

Thus, as was pointed out to the United States Court of Appeals for the District of Columbia Circuit, the test of the applicability of Section 318 of Title 21 of the Code of Laws for the District of Columbia remains a question of whether or not a father of a patient at the St. Elizabeth's Hospital can be *served with process*, pursuant to the filing of a Citation for Rule to Show Cause in the United States District Court for the District of Columbia. As the case which is the subject of this petition now stands *service of process* is the only test. Could it possibly be said to be anywhere close to reasonable that if a father of a patient in the St. Elizabeth's Hospital lives in Kentucky, Alabama, California, Hawaii or Alaska, he is not subject to the liability imposed by the Statute in question, unless he visits within the District of Columbia and is served with Citation for Rule to Show Cause while here? Yet, unless this Honorable Court will grant this Petition for Writ of Certiorari, that is exactly the situation in which the interpretation of the Statute in question will remain.

The United States Court of Appeals for the District of Columbia Circuit has sustained the position taken by counsel for respondent to the effect that the statute places liability upon all designated relatives (if they have sufficient means whereby to make payment) of patients at the St. Elizabeth's Hospital, regardless of where such relatives may live. There is relevancy as to the *arbitrariness* of the Statute in question whereby it is contended in the

argument heretofore that the Statute is violative of the Due Process Clause of the Fifth Amendment and the *Lack of Clarity* which is conceded by the opinion of the United States Court of Appeals for the District of Columbia Circuit. The legal rights of a resident of the sovereign State of Maryland are no different from those of any other State or Commonwealth. The only difference, insofar as the statute in question is concerned, is that a resident of the State of Maryland (or of the Commonwealth of Virginia) would be more likely to be found within the District of Columbia so as to be served with Citation for Rule to Show Cause.

It was pointed out to the United States Court of Appeals for the District of Columbia Circuit and is worthy of repetition here that for thirteen years the second husband of petitioner's daughter, namely Fred C. Schuerger, has lived a life of complete complacency, insofar as his responsibility to the daughter of petitioner is concerned, just a few miles east of the District line in Maryland. If *service* of a Citation to Show Cause is not the test, why haven't the authorities of the District of Columbia tested the question of whether or not he secured a bona fide divorce from petitioner's daughter, after she was committed to the St. Elizabeth's hospital or whether the said Fred C. Schuerger went into one of the so-called "easy divorce" jurisdictions and obtained a void or voidable decree?

These questions, it is respectfully submitted, render the case which is the subject of this petition as most worthy of the consideration of this Honorable Court.

It is interesting and worthy of mention here that counsel for respondent relied upon the case of *Corpus* v. *Department of Mental Hygiene, State of California*, 301 S.W. 2d 217 (Texas 1957), in the trial Court, but that counsel for now petitioner pointed out, in both Courts, that said case supports the position taken by counsel for now petitioner. Said case was a suit against a former California resident;

then a resident of Texas, for support of an indigent mother in California. The Court of Civil Appeals of Texas held that the California Statute could not be enforced against the son after he had become a resident of Texas. While conceding that the analogy could not be compelling in a Federal Court, same is merely that the District of Columbia Statute should not be enforceable against a resident of Maryland, Virginia, Hawaii or Alaska.

III. As to Whether Laches Should Have Applied.

In the present posture of the case which is the subject of this petition, all professors of Equity should hasten to change the ancient maxim that "Equity Aideth Only the Vigilant and Not Those Who Slumber on Their Rights".

Although not conceding liability, it is respectfully submitted that the test which the opinion of the United States Court of Appeals for the District of Columbia Circuit would now establish, insofar as a Municipality is concerned, would be "when did the Municipality take such steps to enforce the statute as amounted to a *Demand* upon the person subject to the liability under the statute".

Counsel for now petitioner raised the defenses of "Laches" and the "Statute of Limitations" in the Trial Court. Learned counsel for now respondent ably contended that Statutes of Limitation do not run against a municipal corporation in seeking to enforce a claim arising out of the exercise of its governmental, as distinguished from its proprietary, functions. Counsel for now petitioner dropped the defense of the "Statute of Limitations" on the ground that law applicable to a municipal corporation was close enough and could well apply to the government of the Federal City.

The defense of "Laches" on the other hand, should have been compelling in both Courts. Indeed, the Trial Judge made inquiry of trial counsel for now respondent, (J.A.

12) "Now from '51 to '61 what was the corporation counsel doing?" The explanation dealt with correspondence between Administrative Agencies of the Government of the District of Columbia and former attorneys for now petitioner coupled with an explanation of the volume of work which the Administrative Agencies have to do and their limited facilities. The fact remains that payments from the Estate of petitioner's daughter ceased on August 5, 1952 and that the Citation for Rule to Show Cause was not filed against now petitioner until March 9, 1961.

The test of the law with regard to Laches is best set forth in the following quotation from McQuillan on Municipal Corporations, 3d Edition, Volume 17, pages 160 and 161:

> "Whether or not an action (meaning an action by a Municipality) is barred by laches should be determined from the facts of the particular case, for it is established that delay alone does not amount to laches, but in addition, injury must have resulted from such delay."

It is respectfully submitted that there could not have been any doubt in either Court, but that respondent had long slumbered on its right to file the Citation for Rule to Show Cause. Also, it was pointed out by counsel for now petitioner, and amply supported by the evidence adduced at the hearings in the Trial Court, that the requirement of a substantial payment to be followed by monthly payments would constitute an injury to now petitioner for the reasons that petitioner is of advanced age and suffers many ailments and infirmities, that petitioner and his wife do not squander any money, but have established a pattern by which they live, and that it would constitute a serious injury and hardship to take away a substantial part of his assets coupled with the requirement of monthly payments after so long a delay in bringing this case against him.

The conclusions of law of the Trial Judge merely held that the respondent was not barred by laches.

The opinion of the United States Court of Appeals for the District of Columbia Circuit appears to endeavor to offer some relief to now petitioner by holding that the time when now petitioner's liability arose is not clear (Opinion page 8). The Opinion also makes reference to the hardship, which the statute seeks to avoid. Thus, the question of laches becomes a question of "*making demand*" and not the filing of a suit.

It is respectfully submitted that an exchange of correspondence should not be substituted for the ancient maxim. If prior counsel for now respondent stalled the Government of the District of Columbia, it was the fault of the authorities of the District of Columbia that they did not observe the law with regard to laches. The statute placed the award in the discretion of the Trial Judge. The opinion of the United States Court of Appeals for the District of Columbia Circuit (page 8) refers to the equitable nature of the Statute.

It is respectfully submitted that the departure from well established principles whereby to apply the Ancient Maxim furnishes further good reason why the case which is the subject of this petition is worthy of the consideration of this Honorable Court.

Counsel for now respondent relied upon the case of *Hart v. Commissioners*, 81 U.S. App. D.C. 154, 155 F. 2d 877 (1946) and the United States Court of Appeals for the District of Columbia Circuit made reference to said case and came to the conclusion that the question before that Honorable Court was "one of statutory construction as to when the liability of the father (petitioner here) began and not a question of limitations or laches". In said case the patient's estate had been used to provide support for patient's wife and daughters. When patient's wife died,

one daughter died and other daughters married, it was held that the Government of the District of Columbia could recover from patient's own monies held by patient's committee. It is respectfully submitted that the analogy is far too imperfect as to have been at all compelling as to "laches" with regard to the case which is the subject of this petition.

IV. As to Immunity of Veteran's Pension Moneys.

The point was well established at the hearings in the Trial Court that without the Veterans Pension Moneys, through the years, now petitioner's assets would be far less than they are. The figures regarding petitioner's pension are set forth in the "Statement of the Matter Involved" hereinabove.

The Trial Judge in his Findings of Fact and Conclusions of Law did not pass upon the question of whether or not that portion of now petitioner's assets, which he would not otherwise own, were it not for his having received Veteran's Pension Moneys through the years, are immune from the claim of new Respondent.

The opinion of the United States Court of Appeals for the District of Columbia Circuit deals with this question only by the footnote on page 7 which is as follows:

> "Appellant contends that since part of his income is from Veteran's Pension, 38 U.S.C. § 310 (a) protects him entirely from liability. Other considerations aside, it is sufficient answer to note that the amount he is required to pay may be fully satisfied without encroachment upon his pension."

This issue was the subject of a separate section in all Briefs filed in the United States Court of Appeals and was one of the subjects of the oral argument before that Honorable Court.

It is respectfully submitted that it is most significant in the case which is the subject of this petition, that we are concerned here with a claim which is merely a "Creature of a Statute" and not with the debt of the Veteran. The usual tests with regard to what types of investments have been made whereby to convert Veteran's Pension Moneys, therefore, become irrelevant. But the principles of law regarding use of veterans pension moneys were established by this Honorable Court in the case of *Lawrence* v. *Shaw*, 300 U.S. 245 (page 250), and reaffirmed in the case of *Porter* v. *Aetna Casualty and Surety Co.*, 370 U.S. 159, to the effect that:

> "These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian are obliged to keep the moneys on his person or under his roof."

and

> "The Congress, we believe, intended that veterans in the safekeeping of their benefits should be able to utilize those normal modes adopted by the community for that purpose—provided the benefit funds, regardless of the technicalities of title and other formalities, are readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments."

The footnote on page 7 of the Opinion of the United States Court of Appeals for the District of Columbia Circuit appears to deal with the question of whether or not now petitioner can pay the sum of Seventy-five Dollars ($75.00) per month from the date when the Citation for Rule to Show Cause was filed, namely March 9, 1961, "without encroachment upon his pension". This leaves unanswered the points made by counsel for now petitioner to the effect that, had it not been for Veteran's Pension Moneys, petitioner's estate would be very much less than

it now is; that the award made by the Trial Judge retroactive to August 5, 1962 against petitioner and in favor of Respondent represents a very large percentage of what petitioner's assets would be were it not for the Veterans Pension Moneys which petitioner has received through the years; and that such award is *not* for a debt incurred by petitioner.

It was pointed out in the Brief for Appellant and argued orally in the United States Court of Appeals for the District of Columbia Circuit that the stocks in the name of petitioner and his wife were purchased mainly with money which petitioner's wife earned when she worked as a secretary and that petitioner's name is on said stocks, as joint owner, for the purpose of avoiding having such stocks become subject to probate proceedings in the event that petitioner's wife should predecease petitioner. This point was well established at the hearings before the Trial Judge.

Nevertheless, in establishing the amount of now petitioner's assets, in the paragraph which preceded the reference to the footnote as set forth hereinabove, the opinion of the Court of Appeals for the District of Columbia Circuit included "stock valued at between $6,000.00 and $7,000.00."

It is, therefore, respectfully submitted to this Honorable Court that this point regarding Veteran's Pension Moneys adds great weight to the contention of counsel for petitioner that this Honorable Court should grant this Petition for Writ of Certiorari. This Honorable Court has steadfastly protected the rights of a veteran to utilize his pension for his welfare. There could not be a more classic example of an effort to defeat this principle than the case which is the subject of this petition in which the Government of the District of Columbia seeks to take moneys from an eighty-six year old veteran, not for the debt of the veteran, himself, but for an obligation which, if it exists at all, is a "Creature of Statute."

V. As to Equitable Defenses.

This point is necessarily closely related to the argument hereinabove regarding Immunity of Veteran's Pension Moneys.

Retirement of elderly persons has become an "American Way of Life". Now petitioner and his wife have established a pattern by which they live. The chart prepared by now petitioner's wife and introduced into evidence in the Trial Court shows that from September 6, 1951 through December 31, 1960 the expenses of now petitioner and his wife exceeded the income received from Retired Pay, Veteran's Pension and rental of the parcel of real estate, 7131-9th Street, N.W., this city. Neither petitioner or his wife can now go back to work to earn money for the Government of the District of Columbia. The stocks and the income from same, as pointed out hereinabove, rightfully belong to petitioner's wife.

Petitioner's Building and Loan Association account has been the obvious first target of counsel for Respondent. Initially, they also aimed at one of the two parcels of real estate owned by petitioner and located within the District of Columbia, namely, 7130-9th Street, N.W. or 7131-9th Street, N.W. It has been unfortunate for petitioner that the value of these parcels of real estate has depreciated in recent years.

The posture of this case, insofar as Equitable considerations are concerned, can best be summed up by the fact that should this Honorable Court deny the Writ of Certiorari, should this case be referred back to the United States District Court for the District of Columbia for decision as to when demand was first made, and should the first correspondence be held to constitute such demand, the net result would be the "hardship" which the opinion of the United States Court of Appeals for the District of Columbia Circuit appears to seek to avoid.

The question of when now petitioner could be said to have been looked to before he could have been held to have been in default (within the meaning of the language of page 8 of the opinion of the United States Court of Appeals for the District of Columbia Circuit) also could well be determined by the Trial Court to have been well after the initial exchange of correspondence.

Nevertheless, the potentiality of nearly wiping out petitioner's cash reserve at 86 years of age and after petitioner and his wife have established the economic pattern under which they have lived for many years adds weight to the necessity and desirability of the granting of this petition and the consideration of this case by this Honorable Court.

Counsel for respondent have argued that petitioner receives medical care as a veteran without cost. There is also the potentiality of medical expenses for petitioner's wife, over and above those which can be covered by insurance for medical expenses.

It is worthy of note that in two cases cited by counsel for now respondent, namely *Dandurand v. Kankakee County*, 196 Ill. 537, 63 N.E. 1011 (1902), and *In Re Idleman's Commitment*, 146 Ore. 13, 27 P. 2d 305 (1933), State Statutes had limited the recovery against near relatives of patients to far less than the amount awarded to now respondent by the Trial Judge and these cases were brought to the attention of the United States Court of Appeals for the District of Columbia Circuit in the Brief for Appellant filed in that Honorable Court. Said cases had also been brought to the attention of the Trial Judge.

SUMMATION OF REASONS FOR ALLOWANCE OF THE WRIT

It is respectfully submitted that there are five compelling reasons, taken individually or with regard to their relationship to each other, why this Petition should be allowed and the Writ of Certiorari granted.

The Statute in question, it is respectfully submitted, is an obvious example of a law being so arbitrary and unreasonable as to violate the "Due Process of Law Clause" of the Fifth Amendment insofar as the same asserts a "fundamental principle of justice". Indeed the unreasonableness of the Statute would have to ruin an elderly person, financially, before there could be a more glaring example of the unreasonableness of the Statute than is presented in this case.

The proper interpretation of the Statute in question with regard to whether the test of the liability of an aged father (of a patient in the St. Elizabeth's Hospital) who lives in and is a resident of one of the States of the Union should be whether or not such father can be served with a "Citation for Rule to Show Cause" within the District of Columbia, alone, it is respectfully submitted, should bring this case within the classification of being worthy of review by this Honorable Court.

It is, of course, vital to jurisprudence that the question of when *demand* was first made should not supplant the Ancient Maxim that "Equity Aideth only the Vigilant and not Those Who Slumber on Their Rights".

This case, it is respectfully submitted, presents a far more important point with regard to the protection of Veteran's Pension Moneys than have other cases in which this Honorable Court has been jealous to protect the rights of Veterans because here we face the potentiality of an injury to an aged veteran, by the taking of a substantial portion of his estate which he could not have accrued had

it not been for his Spanish American War Pension for the past thirty-two years to thirty-seven years and such taking of such portion of this Veteran's estate would not be for a debt which the Veteran had incurred but for a liability which, if it exists at all, is a "Creature of a Statute".

And lastly, this case is worthy of the consideration of this Honorable Court lest the Statute in question, as interpreted by the Trial Court and the United States Court of Appeals for the District of Columbia Circuit, should result in an ultimate award to respondent which would be inequitable in that it would completely upset the pattern of life established and carried on through the years by petitioner and his wife.

Respectfully submitted,

FORD E. YOUNG, JR.
Attorney for Petitioner
5540 Connecticut Ave., N.W.
Washington, D.C.